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Hearing Date: **December 14, 2017**
Hearing Time: **1:00 p.m.**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

ANTHONY BRIATICO,

Case No. 17-12186-cgm

Debtor.

Chapter 13

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RESPONSE TO MOTION TO DISMISS CASE

Anthony Briatico (the “Debtor”), by and through his attorneys Ortiz & Ortiz, L.L.P., hereby responds to the Motion to Dismiss Case (“Motion”) filed by the Chapter 13 Trustee (the “Trustee”). In support thereof, the Debtor states as follows:

BACKGROUND

1. On August 6, 2017, (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code.

2. On November 14, 2017, the Trustee filed the Motion based on the following grounds: (1) failure to comply with the provisions of 11 U.S.C. Sections 1307(c)(1) and (c)(4); (2) failure to remit timely payments to the Trustee; (3) failure to serve chapter 13 plan upon creditors; (4) failure to complete the required financial management course; (5) failure to pursue requested loss mitigation; (6) failure to propose a plan that is sufficient to pay filed claims; and

(7) the Debtor has created unreasonable delay that is prejudicial to creditors.

ARGUMENT

3. The Debtor does not dispute some these occurrences, but respectfully submits that, for the following reasons, the Court should find that the Debtor's delay does not warrant dismissal of the case.

4. The Debtor's failure to comply with 11 U.S.C. Sections 1307(c)(1) and (c)(4) was unintentional and he has since complied with these requirements. The Debtor has not delayed the prosecution of his case and has made monthly plan payments to the Trustee. See attached Declaration of Anthony Briatico.

5. The Debtor has amended his chapter 13 plan and served all creditors with a copy of the amended plan.

6. The Debtor has decided to sell his property instead of pursuing loss mitigation. As a result, the Debtor did not submit an order to enter into the loss mitigation program.

7. The debtor's amended chapter 13 plan provides for the sale of real property that will provide sufficient funds to pay the creditors in this case in full.

8. The Debtor began to market his property within a month of filing his case and has entered into a contract of sale in the amount of \$645,000 with a \$100,000 financing contingency. The Debtor submits that he has not delayed the process to sell his property. Upon information and belief, the buyer in this case has applied for financing and is waiting for a final loan commitment to move forward with this sale.

9. The Debtor will complete his financial management course prior to the next confirmation hearing in this case. See attached Declaration of Anthony Briatico..

10. As a result, the Debtor has cured the grounds in the Motion and his case should not be dismissed.

WHEREFORE, the Debtor requests that the Court deny the Trustee's Motion and for such further relief as the Court deems appropriate.

Dated: December 11, 2017
Astoria, New York

/s/Martha J. de Jesus
Martha J. de Jesus, Esq.
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DECLARATION OF DEBTOR

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

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DECLARATION OF ANTHONY BRIATICO

Anthony Briatico, being duly sworn, hereby declares as follows:

1. On August 6, 2017, I filed a chapter 13 petition in the Southern District of New York (the "Petition Date"). I am the owner of a cooperative unit located at 433 West 34th Street, Apt. 13H, New York, NY 10001 (the "Property").

2. On August 21, 2017, I filed a chapter 13 plan and requested to enter into the loss mitigation program.

3. On August 25, 2017, the New York State Department of Taxation and Finance filed a proof of claim in my case in the amount of \$42,922.79. Subsequently, on September 11, 2017, the Internal Revenue Service filed a proof of claim in my case in the amount of \$98,126.31.

4. After reviewing the total amount tax debt filed in my case, I decided not pursue loss mitigation and started to market my Property.

5. On October 27, 2017, I entered into a contract of sale for the Property for the purchase price of 645,000 (the "Sale"). The contract is contingent on the buyer obtaining financing in the amount of \$100,000.

6. I am advised by my attorneys that the buyer has applied for financing and the next

step in the Sale is for the buyer to secure a loan commitment.

7. I expect to close on the Sale of my Property quickly and will be able to satisfy my debts from the proceeds of the sale.

8. I have made three plan payments to the trustee and believe that I am only missing the December 2017 plan payment of \$400.

9. I will complete my financial management course prior to my next confirmation hearing.

10. I have not unreasonably delayed the prosecution of my case and expect to be able to my debtors in full within the next six months.

I declare the foregoing is true under penalty of perjury.

Dated: New York, New York
December 11, 2017

/s/Anthony Briatico
Anthony Briatico